

1 Barrett S. Litt, SBN 45527  
2 Email: blitt@kmbllaw.com  
3 KAYE, MCLANE, BEDNARSKI & LITT  
4 975 East Green Street  
5 Pasadena, California 91106  
6 Telephone: (626) 844-7660  
7 Facsimile: (626) 844-7670

8 Carol A. Sobel, SBN 84483  
9 Email: carolsobel@aol.com  
10 LAW OFFICE OF CAROL A. SOBEL  
11 3110 Main Street, Suite 210  
12 Santa Monica, California 90405  
13 Telephone: (310) 393-3055  
14 Facsimile: (310) 451-3858

15  
16 ADDITIONAL COUNSEL LISTED  
17 ON NEXT PAGE  
18 Attorneys for Plaintiffs

19  
20 UNITED STATES DISTRICT COURT  
21 CENTRAL DISTRICT OF CALIFORNIA

22 CHARMAINE CHUA, ET AL.

23 PLAINTIFFS,

24 vs.

25 CITY OF LOS ANGELES, ET AL.,

26 DEFENDANTS.

CASE No: 2:16-cv-00237-JAK-GJS(x)  
[HON. JOHN A. KRONSTADT]

NOTICE OF MOTION AND MOTION  
FOR PRELIMINARY APPROVAL OF  
CLASS ACTION SETTLEMENT;  
[PROPOSED] ORDER;  
DECLARATIONS AND EXHIBITS

HEARING DATE: SEPTEMBER 9, 2019  
HEARING TIME: 8:30 A.M.  
COURTROOM: 10B

1 ADDITIONAL PLAINTIFFS' COUNSEL

2 Paul Hoffman, SBN 71244

3 Email. hoffpaul@aol.com

4 Catherine Sweetser, SBN271142

Email. catherine.sdshhh@gmail.com

5 SCHONBRUN, SEPLOW, HARRIS & HOFFMAN

6 732 Ocean Front Walk

Venice, California 90291

7 Tel. (310) 396-0731

8 Fax. (310) 399-7040

9 Colleen M. Flynn, SBN 234281

10 Email. cflynnlaw@yahoo.com

LAW OFFICE OF COLLEEN FLYNN

11 3435 Wilshire Boulevard, Suite 2910

12 Los Angeles, California 9001 0

13 Tel. 213 252-9444

14 Fax. 213 252-0091

15 Matthew Strugar, SBN 232951

Email. matthewstrugar@gmail.com

16 LAW OFFICE OF MATTHEW STRUGAR

17 2108 Cove Avenue

18 Los Angeles, California 90039

19 Tel: 323 696-2299

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1 PLEASE TAKE NOTICE that, on September 9, 2019, at 8:30 a.m., or as  
2 soon thereafter as this matter may be heard in Courtroom 10B of the United States  
3 District Court for the Central District of California, 350 West First Street, Los  
4 Angeles, California 90012, Plaintiffs will, and hereby do, move the Court to  
5 preliminarily approve the proposed settlement in this case, and to authorize the  
6 mailing and other forms of notice to class members.

7 This motion is unopposed and is based on the accompanying Memorandum  
8 of Law, the stipulation of all parties to entry of the proposed Preliminary Approval  
9 Order, the proposed Preliminary Approval Order and exhibits thereto filed  
10 concurrently, the files and records in this case, and on such further evidence as  
11 may be presented at a hearing on the motion.

12 DATED: July 15, 2019

Respectfully submitted,  
Kaye, McLane, Bednarski & Litt, LLP

14 By: /s/ Barrett S. Litt  
15 Barrett S. Litt  
16 Attorneys for Plaintiffs  
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## MEMORANDUM OF POINTS & AUTHORITIES

### **I. INTRODUCTION**

This action arises out of the actions by Defendants surrounding a protest on November 26, 2014, in or around the vicinity of Sixth and Hope Street in Los Angeles over the decision not to file criminal charges for the killing of Michael Brown in Ferguson, Mo. Plaintiffs allege that Defendants unlawfully declared an unlawful assembly, unlawfully and unjustifiably arrested Plaintiffs and unlawfully denied Plaintiffs release from custody on their own recognizance (“OR”) regarding the and the attendant arrest, detention and release of Plaintiffs.

The Court entered its final class certification order certifying a damages class for the Sixth and Hope protestors on May 25, 2018. Dkt. 50. It denied without prejudice certification for an injunctive relief class and did not certify a class for the Beverly and Alvarado detention (leaving one individual plaintiff, Kyle Todd, for that claim). *Id.*

The parties held three in-person mediation conferences before Magistrate Judge Jay Gandhi, two while he was still on the bench and one after, which did not result in a settlement. After Plaintiffs filed their motion for general damages and expert reports were exchanged, the parties had a one-on-one negotiation, which resulted in the instant proposed settlement, subject to the approval of the Court. Declaration of Barrett S. Litt (hereafter “Litt Dec.”), ¶ 4. The proposed settlement has now been agreed to by all parties, including approval by the Los Angeles City Council. To minimize the class administration costs, Plaintiffs decided it would be more efficient for the class administration to be handled by the Law Office of Carol Sobel for a flat fee of \$20,000, which would be less expensive by approximately \$10,000 than hiring a professional administrator. Litt Dec.”, ¶ 10. In other protest cases that the same Plaintiffs’ counsel have done, while they have used a professional administrator, Ms. Sobel did much of the outreach due to her

relationship with class members from having acted as counsel for the protest organizers and addressing issues of getting the arrestees released at the time.

## II. TERMS OF THE SETTLEMENT

The terms of the settlement are set forth in greater detail in the exhibits attached to the Proposed Preliminary Approval Order (specifically in the Settlement Agreement), which exhibits are as follows:

Exhibit A	Settlement Agreement
Exhibit B	Proposed Class Notice
Exhibit C	Claim Form

In summary, the class settlement's basic terms, subject to court approval, are as follows:

- a. A class fund of \$255,010 to be paid as follows:
  - i. expert costs (totaling \$20,210) to be paid to the Client Trust Account of the Law Office of Carol Sobel;
  - ii. mediation costs (totaling \$5500) to be paid to the Client Trust Account of the Law Office of Carol Sobel;
  - iii. incentive awards to the three class representatives of \$5000 each to be paid to the Client Trust Account of the Law Office of Carol Sobel (for a total of \$15,000);
  - iv. class administration costs of a flat fee of \$20,000 to be paid to the Law Office of Carol Sobel, inclusive of all cost of mailing and reporting<sup>1</sup>; and

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<sup>1</sup> Ms. Sobel has agreed to do this in order to minimize the cost of class administration, as her office has been in contact with many class members, and this amount is considerably less than what would be paid to a professional administrator. In Plaintiffs' counsel's experience, the cost of class administration of a class this size would likely be in the \$30,000 range. Ms. Sobel's office has performed this service in other cases before the District Court and has assisted in maximizing class participation in still other cases where an outside firm was retained to administer the class fund.



v. \$200,000 for distribution pro rata to claiming class members to be paid to the Client Trust Account of the Law Office of Carol Sobel.

b. \$484,290 (inclusive of \$7,163.27 in litigation costs other than the expert, mediation and class administration costs) as compensation for statutory attorney's fees and costs (subject to the approval of the court), to be paid to the Client Trust Account of the Law Office of Carol Sobel, and to be the subject of a separate motion for attorney's fees pursuant to 42 U.S.C. §1988 and Civil Code §52.1(h). For purposes of this motion, Defendants agree that Plaintiffs are the prevailing party under the foregoing statutes for a motion pursuant to this settlement and further agree that \$476,801.93 (the portion of the fees and costs constituting fees) is substantially discounted below the amounts that Plaintiffs would have sought in an attorneys' fee motion as the prevailing parties in a contested motion. Plaintiffs' motion for attorneys' fees will include the full amount of fees and costs that would be available without the limitation of this agreement, but it is agreed that in no event will more than \$484,290 in fees and costs be awarded.

c. \$5000 to Todd Kyle as compensation for his individual claim paid to the Client Trust Account of the Law Office of Carol Sobel.

The proposed Preliminary Approval Order assumes entry of the order no later than August 19, 2019. If an order is not entered by that time, the dates will have to be extended. The draft preliminary approval order indicates the time needed between the various events if the times do need to change.

### **III. THE STANDARDS FOR ENTRY OF THE PRELIMINARY APPROVAL ORDER HAVE BEEN MET**

The following from the court in *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 935 (N.D. Cal. 2016) well explains the preliminary approval inquiry:

1 “District courts have interpreted Rule 23(e) to require a two-step  
2 process for the approval of class action settlements: ‘the Court first  
3 determines whether a proposed class action settlement deserves preliminary  
4 approval and then, after notice is given to class members, whether final  
5 approval is warranted.’ ” *In re High-Tech Emp. Antitrust Litig.*, No. 11–  
6 CV–02509–LHK, 2014 WL 3917126, at \*3 (N.D.Cal. Aug. 8, 2014)  
7 (quoting *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523,  
8 525 (C.D.Cal.2004)). At the final approval stage, it is well-established that  
9 the Court must balance the following non-exhaustive factors to evaluate  
10 the fairness of the proposed settlement: “the strength of the plaintiffs’ case;  
11 the risk, expense, complexity, and likely duration of further litigation; the  
12 risk of maintaining class action status throughout the trial; the amount  
13 offered in settlement; the extent of discovery completed and the stage of the  
14 proceedings; the experience and views of counsel; the presence of a  
15 governmental participant; and the reaction of the class members to the  
16 proposed settlement.” *Hanlon*, 150 F.3d at 1026 (citing *Torrissi v. Tucson*  
17 *Elec. Power Co.*, 8 F.3d 1370, 1375 (9th Cir.1993)).

18 It is less clear what factors should guide the Court’s evaluation of the  
19 proposed settlement at the preliminary approval stage. “Some  
20 district courts ... have stated that the relevant inquiry is whether  
21 the settlement ‘falls within the range of possible approval’ or ‘within the  
22 range of reasonableness.’ ” *In re High-Tech Emp. Antitrust Litig.*, 2014 WL  
23 3917126, at \*3 (quoting *In re Tableware Antitrust Litig.*, 484 F.Supp.2d  
24 1078, 1079 (N.D. Cal. 2007)) (citing *Cordy v. USS–Posco Indus.*, No. 12–  
25 553, 2013 WL 4028627, at \*3 (N.D. Cal. Aug. 1, 2013)). In determining  
26 whether the proposed settlement falls within the range of reasonableness,  
27 perhaps the most important factor to consider is “plaintiffs’ expected  
28 recovery balanced against the value of the settlement offer.” *Id.* (quoting *In*

1 *re Nat'l Football League Players' Concussion Injury Litig.*, 961 F.Supp.2d  
2 708, 714 (E.D. Pa. 2014)); *see also Nielson v. Sports Auth.*, No. C-11-  
3 4724-SBA, 2012 WL 5941614, at \*6 (N.D. Cal. Nov. 27, 2012).

4 Determining whether the settlement falls in the range of reasonableness also  
5 requires evaluating the relative strengths and weaknesses of the plaintiffs'  
6 case; it may be reasonable to settle a weak claim for relatively little, while it  
7 is not reasonable to settle a strong claim for the same amount. *See In re*  
8 *High-Tech Emp. Antitrust Litig.*, 2014 WL 3917126, at \*4.

9 The standards for entry of a preliminary approval order have been similarly  
10 summarized in *Newberg on Class Actions* as follows:

11 [T]he goal of preliminary approval is for a court to determine  
12 whether notice of the proposed settlement should be sent to the class, not to  
13 make a final determination of the settlement's fairness. Accordingly, the  
14 standard that governs the preliminary approval inquiry is less demanding  
15 than the standard that applies at the final approval phase. Some courts go so  
16 far as to state that a proposed settlement is 'presumptively reasonable at the  
17 preliminary approval stage, and there is an accordingly heavy burden of  
18 demonstrating otherwise.' Nevertheless, most courts will not simply  
19 "rubber-stamp" a motion for preliminary approval, and review is more than  
20 "perfunctory."

21 "Bearing in mind that the primary goal at the preliminary review stage  
22 is to ascertain whether notice of the proposed settlement should be sent to  
23 the class, courts sometimes define the preliminary approval standard as  
24 determining whether there is "probable cause" to submit the [settlement] to  
25 class members and [to] hold a full-scale hearing as to its fairness.' More  
26 specifically, courts will grant preliminary approval where the proposed  
27 settlement 'is neither illegal nor collusive and is within the range of possible  
28 approval.' Courts in most circuits use some variation of this test. The test

1 grew out of a statement in an early version of the *Manual for Complex*  
2 *Litigation* calling for approval if ‘the proposed settlement appears to be the  
3 product of serious, informed, non-collusive negotiations, has no obvious  
4 deficiencies, does not improperly grant preferential treatment to class  
5 representatives or segments of the class, and falls within the range of  
6 possible [judicial] approval.’ Many courts continue to utilize that phrasing of  
7 the test.

8 ...

9 “The general test—holding that a settlement will be preliminarily  
10 approved if it ‘is neither illegal nor collusive and is within the range of  
11 possible approval’—contains both procedural and substantive elements. The  
12 procedural element focuses on the nature of the settlement negotiations and  
13 the possibility of collusion, while the substantive element focuses on the  
14 terms of the agreement itself. ...”.

15 *Newberg on Class Actions* §13:13 (5th ed.) (footnote references and footnotes  
16 omitted).

17 Applying the factors for preliminary approval, this case qualifies for such  
18 approval. The following facts are uncontested or stipulated to in the parties’  
19 accompanying stipulation for purposes of the settlement and pleadings related to it:

- 20 1. The settlement terms were negotiated at arms’ length with the  
21 assistance of an experienced mediator and jurist, now retired  
22 Magistrate Judge Jay Gandhi, after three in person mediation sessions  
23 and one subsequent direct party to party negotiation. Litt Dec., ¶ 4.
- 24 2. This case was litigated extensively and vigorously. Plaintiffs  
25 conducted extensive discovery, both documents and numerous  
26 depositions. They also gathered substantial third-party evidence. They  
27 retained experts regarding the propriety of the police actions,  
28

reenactment of the audibility of the police unlawful assembly announcement and general damages. Litt Dec., ¶ 5.

3. There were arms' length negotiations and no collusion, as evidenced by the extensive discovery and mediation process. (See Litt Dec. ¶¶ 4,5.)
4. The proposed settlement provides a slight benefit to the class representatives (\$5,000 in addition to their class member formula award). Carol Sobel's Declaration describes in some detail the contributions made by the Class representatives to the successful resolution of the case. See Sobel Dec., ¶¶ 18-21. The proposal for incentive awards was at Class Counsel's initiative, and no discussion or agreement regarding incentive awards occurred with the Named Plaintiffs until the proposed settlement was reached. The proposed incentive awards to each Named Plaintiff reflects counsel's assessment of the value of their contributions to the case, the risk taken by them and the size of the settlement. Litt Dec., ¶ 7.
5. Plaintiffs proposal for \$5,000 for each of the three class representatives satisfies the considerations in determining the reasonableness of incentive awards. These figures are well within the range of acceptable incentive payments to class representatives for which the Court has discretion in recognition of work done on behalf of the class and in consideration of the risk undertaken in bringing the action. *See, e.g., Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009) (incentive awards are “intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general”); *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir.

2003) (recognizing that service awards to named plaintiffs in a class action are permissible and do not render a settlement unfair or unreasonable). “An incentive award of \$5,000 per class representative is in line with other awards approved in this circuit.” *Weeks v. Kellogg Co.*, No. CV 09-08102 MMM RZX, 2013 WL 6531177, at \*37 (C.D. Cal. Nov. 23, 2013). Substantially larger incentive awards have been approved. *See, e.g., Glass v. UBS Fin. Servs., Inc.*, 2007 WL 221862, at \*16 (N.D. Cal. Jan.26, 2007) (approving payments of \$25,000 to each named plaintiff); *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal.1995) (awarding \$50,000 to a lead plaintiff). Plaintiffs will more fully brief this issue in connection with the final approval order and address it here only to demonstrate that this is appropriate. The Class Notice will advise class members of this proposed incentive award, thereby allowing them the opportunity to object to it.

6. The recovery for class members is substantial, especially when viewed from the perspective of the trial risks. Given the class size of approximately 140, and the class fund of \$200,000, the minimum recovery per class member is approximately \$1425. Given that not all class members will file claims, the likely recovery per class member (assuming an 80-85% claims rate) is approximately \$1700. While this is lower than amounts in some comparable cases, this case carried greater risk. Defendants claimed that the unlawful assembly order was justified and audible, and claimed that they did not deny OR release but rather needed the time to process the arrestees before releasing them. While Plaintiffs believed they had a strong claim, they considered this claim to be considerably more subject to dispute than other cases they handled. Plaintiffs’ counsel concluded that a recovery

1 of between \$1500-\$2000 per class member is a fair settlement given  
2 the disputed nature of the claim and that all class members were  
3 released within 18 hours (in contrast to longer detentions in other  
4 cases). Litt Dec. ¶ 9.

5 7. Counsel did not send this case out for bid to individual professional  
6 class administrators but instead decided to have the class  
7 administration handled by Ms. Sobel's office. In our previous protest  
8 cases, where we have used professional class administrators, Ms.  
9 Sobel has ended up engaging in substantial independent outreach to  
10 class members because of her role in representing the protest  
11 organizers preceding and during the protests, as a result of which she  
12 has built substantial relationships with many protest organizers and  
13 activists in the Los Angeles area. In my recent experience in settling  
14 several class actions over the past few years, in each of which  
15 professional class administrators were retained, the minimum cost of a  
16 professional administrator, no matter how small the class size, is  
17 \$30,000 or more. We have agreed instead that Ms. Sobel will do the  
18 class administration for \$20,000. This is advantageous to the class  
19 because it is a lower cost than for a professional administrator and  
20 advantageous to Ms. Sobel because she will receive some  
21 compensation for her work in reaching class members whereas her  
22 similar work in other cases went completely uncompensated.  
23 Accordingly, we request that the Court appoint the Law Office of  
24 Carol Sobel as class administrator. Litt Dec. ¶ 10.

25 Examining what the *Cotter* Court looked to as the most important factor to  
26 consider ("plaintiffs' expected recovery balanced against the value of  
27 the settlement offer"), the proposed settlement is a fair and reasonable settlement.  
28 The likely maximum recovery here was in the \$4000 range if statutory damages



1 were awarded under Civil Code § 52.1, but the applicability of §52.1 to claims  
2 such as these is hotly disputed, has been the subject of considerable legal debate,  
3 and its contours are not yet clearly set. Absent statutory damages, if the court had  
4 allowed classwide general damages, the likely recovery was \$2000-\$5000  
5 (although it is somewhat difficult to predict). In the absence of statutory or general  
6 damages, and without a settlement, class members would have been left to pursue  
7 relatively modest damages claims individually, in which the attorney's fees would  
8 likely have exceeded individual damages by a greater ratio than in *Rivera, supra*.  
9 An additional factor driving settlement from Plaintiffs' perspective is that, even if  
10 Plaintiffs were successful at trial, this case could have spread out over several  
11 years litigating individual damages claims and defending a potential appeal.

12         Given all of these factors, it was the judgment of Plaintiffs' counsel that the  
13 settlement represents a fair compromise reflecting "plaintiffs' expected recovery  
14 balanced against the value of the settlement offer." Accordingly, the proposed  
15 settlement is certainly "within the range of possible approval." (*Newberg, supra.*)

#### 16 **IV. ATTORNEYS' FEES**

17         Attached to this motion as Exhibit D are the summaries of fees and costs and  
18 other information required by §10(e)(i) of this Court's Standing Order For Civil  
19 Cases. Those materials include 1) a spreadsheet establishing the time spent on the  
20 case to date by each biller, organized as indicated by Exhibit G to the foregoing  
21 standing order; 2) an estimate of future attorneys' fees that the agreed upon  
22 attorneys' fee will include; 3) Plaintiffs' normal hourly rate as well as the hourly  
23 rates that will actually be realized (which are substantially below what Plaintiffs'  
24 counsel consider their normal hourly rate); and 4) preliminary Declarations from  
25 Class Counsel Carol Sobel and Barrett S. Litt supporting the requested award  
26 including demonstrating the exercise of billing judgment in the hours claimed. The  
27 full fee detail is not included in the preliminary approval materials but will be in  
28



1 the motion for attorneys' fees to be filed and to which class members will have the  
2 right to object.

3 These tables reflect the work in this case through July 9, 2019 for Mr. Litt's  
4 firm and through December 31, 2018 for the other attorneys. The hourly rates used  
5 are supported by the Declarations of Class Counsel Carol Sobel and Barrett S. Litt,  
6 both of whom have been recognized by various courts as experts on attorneys'  
7 fees. See Sobel Dec., ¶¶ 35, 38 and Litt Dec., ¶¶ 18,19. The request for fees here is  
8 not for a fee award out of the Class Fund, but for a statutory fee under 42 U.S.C.  
9 §1988 and Cal. Civil Code §52.1(i).<sup>2</sup> Because this is a class action, Plaintiffs'  
10 counsel will be filing a full attorneys' fee motion, and class members will have the  
11 opportunity to object, Plaintiffs' counsel do not submit their full presentation in  
12 support of fees at this time. However, in light of the Court's Standing Order, they  
13 do provide rate support in the Sobel and Litt Declarations and attachments.

14 The agreed-upon attorneys' fee award, subject to court approval, reflects a  
15 substantial discount from what Plaintiffs' counsel would have sought and would  
16 reasonably expect to be awarded as statutory attorneys' fees. Litt Dec., ¶ 38. While  
17 the fees are higher than the Class Damages Fund, that is not surprising in a civil  
18 rights class action where the size of the class and the extent of damages was  
19 relatively small compared to other protest class actions in which Plaintiffs' counsel

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21 <sup>2</sup> Although it is immaterial in this context, since the requested fees are well below  
22 lodestar, such statutory fees include fees on fees in contrast to fees drawn from the Class  
23 Fund. See, e.g., *Prandini v. National Tea Co.*, 585 F.2d 47, 53, (3d Cir. 1978)  
24 (explaining that, because the class action fee request there was for a statutory fee award  
25 and not for fees drawn from a common fund, the attorneys were due compensation for the  
26 work spent litigating the attorney's fees); *Donovan v. CSEA Local Union 1000, American*  
27 *Federation of State, County and Municipal Employees, AFL-CIO*, 784 F.2d 98, 106 (2d  
28 Cir. 1986) (allowing for fees-on-fees in a class action fee-shifting case but carefully  
distinguishing it from common fund case); *5 Newberg on Class Actions* §15:93 (5th ed.)  
(Applying the lodestar method in common fund cases—Time spent advocating for fees  
("fees-on-fees")),

1 have been involved. The agreed-upon attorneys' fee award, subject to court  
2 approval, reflects a substantial discount from what Plaintiffs' counsel would have  
3 sought and would reasonably expect to be awarded as statutory attorneys' fees. Litt  
4 Dec., ¶ 38. The basis for the fee claim here is statutory attorneys' fees, which  
5 (unlike percentage of the fund class awards) are not correlated to the size of the  
6 plaintiffs' recovery, and look to the reasonable hours and rates and the public  
7 benefit that resulted from the litigation. *See City of Riverside v. Rivera*, 477 U.S.  
8 561, 106 S.Ct. 2686, 2695, 91 L.Ed.2d 466 (1986), (quoting S.Rep. No. 94-1011,  
9 p. 6 (176), reprinted in, U.S. Code Cong. & Admin.News 1976 pp. 5908, 5913  
10 ("[b]ecause damage awards do not reflect fully the public benefit advanced by civil  
11 rights litigation, Congress did not intend for fees in civil rights cases ... to depend  
12 on obtaining substantial monetary relief. Rather, Congress made clear that it  
13 'intended that the amount of fees ... not be reduced because the rights involved  
14 may be nonpecuniary in nature.' ") (emphasis added by Supreme Court)). As a  
15 result, "[e]ven in cases seeking only monetary relief, 'a successful civil rights  
16 plaintiff often secures important social benefits that are not reflected in nominal or  
17 relatively small damage awards.' *Id.* [*Rivera*] at 2694. Therefore, it is inappropriate  
18 for a district court to reduce a fee award below the lodestar simply because the  
19 damages obtained are small. Permitting such reductions would create an incentive  
20 to bring only those civil-rights cases that would produce large damage awards.  
21 This incentive conflicts with the purposes of section 1988. *See id.* [*Rivera*] at 2695-  
22 97." *Quesada v. Thomason*, 850 F.2d 537, 540 (9th Cir. 1988).

23 Mr. Litt's Declaration also explains that, based on his prior experience in  
24 settling numerous class actions, Class Counsel anticipate that an additional 50-125  
25 hours (exclusive of class administration) will be spent between the attorneys' fee  
26 motion, dealing with certain class issues or class member inquiries, responses to  
27 objections if there are any, and the final approval motion and final approval order.  
28 Litt Dec., ¶ 40. It is not possible to be more accurate because of unknown

1 circumstances that may arise, and the varying time needed depending on the  
2 existence and state of objections. In addition, because the fee information for the  
3 other firms is not fully up to date, the final tally of time will include that.

4 **V. CONCLUSION**

5 For the foregoing reasons, Plaintiffs ask that the Court preliminarily approve  
6 the settlement, and sign the proposed Preliminary Approval Order (with any  
7 revisions the Court deems necessary). That Order contains dates that have been  
8 worked out among the parties. They assume that the order will be entered by  
9 September 9. If it is later, the dates may need to be modified to allow sufficient  
10 time to follow the schedule.

11 DATED: July 12, 2019

Respectfully submitted,  
KAYE, McLANE, BEDNARSKI & LITT, LLP

13 By: /s/ Barrett S. Litt

14 Barrett S. Litt  
15 Attorneys for Plaintiffs  
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